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JAN 29 2007

Serial No. 09/816,016

Art Unit: 3643

Examiner: Valenti, Andrea M.

REMARKS

In response to the Patent Office Letter of August 28, 2006, the Applicant respectfully requests reexamination and reconsideration. To further the prosecution of this application, previously submitted and amended claims have been canceled from the application and a new set of claims has been introduced in their place, namely, claims 50-64. This includes now only a single independent claim.

The Applicant acknowledges the citation by the Examiner of the new reference, namely U.S. Patent No. 5,452,682 to Bescherer et al.

It is noted that the Examiner has rejected claim 27, in view of the cancellation of this claim it is believed that this rejection is now moot. The Applicant has made every effort to avoid any antecedent basis issues with regard to the added claims.

In the rejections set forth by the Examiner, there has been reliance upon the Duncraft reference, as well as the Bescherer et al. '682 patent and the Colwell et al. '040 patent.

The Examiner has conceded that the Duncraft reference does not teach the claimed clamp, nor does it teach the claimed threaded plug. It is the Applicant's position that the Examiner has not made out a *prima facie* case under 35 U.S.C. §103(a) in that there is clearly no teaching in either of the references that a clamp be disposed over a cover and about a seed holder. In this regard, the Examiner has taken the position that her proposed modification "is merely the substitution of an alternate equivalent vertical member taught by Colwell performing the same intended function". These so-called "vertical members" are not equivalent in that mainly in Colwell et al. there is nothing more than a support pole while in the present invention there is a hollow chamber for receiving bird feed. They do not at all perform the same function as alleged by the Examiner. Moreover, there is no hint or suggestion that a clamp be situated as proposed by the Examiner about a seed holder. Moreover, it is the Applicant's position that the Examiner has not made out a *prima facie* case under 35 U.S.C. 103(a) regarding the combination of Duncraft and Bescherer et al. in that there is clearly no teaching that the threaded plug be used with a base of the type shown in the Duncraft reference.

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In the Bescherer et al. patent there is simply disclosed a perch extender and not a base member for supporting at the periphery thereof a selective housing and cylindrical sidewall.

Furthermore, other distinguishing limitations are found in new claim 50. For example, the diameter of the lower peripheral edge of the cutter is defined as being greater than the diameter of the cylindrical sidewall of the selected housing so that the lower peripheral edge of the cover extends beyond the cylindrical sidewall. Also the lower peripheral edge of the cover is further defined as disposed at a location below the top edge of the cylindrical sidewall when the cover is so disposed on the cylindrical sidewall. These features are not shown in the references relied upon by the Examiner. Moreover, claim 50 now also defines a seed holder cap and a hanger attached to the seed holder and for supporting the seed holder cap to enable the cap to be slid therealong to provide access to the seed holder housing.

With the submission of new claim 50, it is believed that this application should now be in condition for allowance. The references previously relied upon by the Examiner whether taken singly or in combination does not teach the new combination set forth in claim 50. Claims 51-64 should also be found in condition for allowance as they contain all of the limitations of claim 50.

CONCLUSION

In view of the foregoing amendments and remarks, the Applicant respectfully submits that all of the claims pending in the above-identified application are in condition for allowance, and a notice to that effect is earnestly solicited.

If the present application is found by the Examiner not to be in condition for allowance, then the Applicant hereby requests a telephone or personal interview to facilitate the resolution of any remaining matters. Applicant's attorney may be contacted by telephone at the number indicated below to schedule such an interview.

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The U.S. Patent and Trademark Office is authorized to charge any additional fees incurred as a result of the filing hereof or credit any overpayment to our deposit account #19-0120.

Respectfully submitted,
Colwell, Betsy P., Applicant

Dated:

Jan 29, 2007

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